

LEGAL CONSEQUENCES FOR PERPETRATORS OF VIOLATIONS OF THE ECONOMIC RIGHTS OF THE CREATOR AND EFFORTS TO STRENGTHEN THE PROTECTION OF A SONG COPYRIGHT WORK

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Abstract

This study is purposed to determine the legal consequences for someone who commits copyright infringement, especially when the person commercially utilizes the economic rights of a song copyright work. It also wants to know what efforts can strengthen the protection of a song copyright work. The method used in this study is normative juridical method through literature study, with the presentation of data in the form of secondary data. The results showed that the legal consequences for perpetrators of violations of the economic rights of copyright works are punished with imprisonment for a maximum of four years and / or a maximum fine of Rp. 1.000.000.000. In the sanctions, parties other than the creator are prohibited from taking advantage of the economic rights of the creator. The effort to strengthen the protection of a song copyright work is to form a special body that will be in charge of preventing and eradicating all acts that violate the copyright of song works. Then no less important is to apply all the provisions of existing regulations firmly by all law enforcement officers, especially judges in each decision.

Keywords: *Actors; Economic Rights; Song Copyright Works*

INTRODUCTION

Intellectual property, which was known as Intellectual Property Rights (*Hak Kekayaan Intellektual*, HKI)¹, has been an interesting talk for societies not only in national level, but also in international one. This is because intellectual property² has been traded globally³. The globalization, which has reached its

¹ HKI is the right resulted from creative activities, which are human's clarity expressed to the public in various forms. These activities possess benefits that support human's life. They also possess economic value. See Muchtar AH Labetubun, 2019, Labetubun, M. A. (2019). *Penyelesaian Sengketa Hak Atas Logo (Suatu Kajian Overlapping Hak Cipta dan Merek)*. *ADHAPER: Jurnal Hukum Acara Perdata*, 5(1), 151-166., Januari-Juni, pg. 152.

² Intellectual properties consist of two, they are: 1) copyrights and neighboring rights, which include Science, Art, and Literature; and 2) Industrial Property Right, which include Patent, Trademark, geographical indication, Industrial design, Layout Design of Integrated Circuit, and trade secret. See Dara Quthni Effida, 2019, Effida, D. Q. (2019). *Tinjauan Yuridis Indikasi Geografis Sebagai Hak Kekayaan Intelektual Non-Individual (Komunal)*. *Ius Civile: Refleksi Penegakan Hukum dan Keadilan*, 3(2), pg. 59.

³ Globalization can minimize gaps between developed and developing countries through the open opportunities for the involvement of developing countries in international trade. See Betharia Noor Indah Sari, 2015, *Personalitas Hukum Internasional dalam Pasar Tunggal Asean*, Kencana, Jakarta, pg. 41.

influence since 1990s, has warned the global societies⁴ that intellectual property can be held for trading by involving many countries.

Intellectual property has had the nomenclatures changed for four times. It was started from *Hak Cipta, Paten, dan Merek* (HCPM - Copyright, Patent Right, and Brand Right), then changed into *Hak atas Kekayaan Intellectual* (HaKI, Rights of Intellectual Property). Later, it was changed into *Hak Kekayaan Intelektual* (HKI, Intellectual Property Rights). Lastly, after Presidential Regulation No. 44 of 2015 on The Law and Human Rights Ministry had been signed, it was changed into *Kekayaan Intelektual* (KI - Intellectual Property). To adjust with other nations, who name the same institutions without the word 'right'⁵, is the reason of the last changing into *Kekayaan Intelektual* (Intellectual Property).

In the context of intellectual property (especially copyrights), the intellectual property itself is not only intended for the art and culture, but it can also be utilized for the commerce and industry involving the creators. Thus, these protected properties of art and culture can improve the wealth either for the creators or for the nation and people.⁶

In law of intellectual property rights, copyrights are protected by the Law no. 28 of 2014 on Copyrights. The protection can be provided after the copyrights are present and they exist in real form instead of being idea. The works must show authenticity, which indicate ability, creativity or being creative⁷, or expertise, so they can be seen, read, or heard.

In line with technology advance and today's condition, creativity is the main provision instead of financial capital. The world is market, and information is the provision. Someone with high creativity has big opportunity to well develop.⁸ Thus, protection shall be provided for the creativity resulting works.

The protection, as intended in the law of copyrights, is directly or automatically provided after the works are created or are present. It needs no registration. This means that the registration is not the cause of a work to be protected. Instead, the legal protection on a work occurs because it is recorded. This is asserted in Law No. 28 of 2014, Article 1, Paragraph 1 on Copyrights (Laws on Copyrights). The paragraph states "Copyright means an exclusive right of the author vested automatically on the basis of

⁴ Jusuf Wanandi, 2006, *Global, Regional and National: Strategic Issues & Linkages*, Centre for Strategic and International Studies, Jakarta, pg. 13.

⁵ Ulinuha, L. (2017). Penggunaan Hak Cipta Sebagai Objek Jaminan Fidusia. *J. Priv. & Com. L.*, 1, 85., pg. 86.

⁶ Sari, I. (2016). KEDUDUKAN HAK CIPTA DALAM MEWUJUDKAN HAK EKONOMI SEBAGAI UPAYA PERLINDUNGAN TERHADAP INTELLECTUAL PROPERTY RIGHTS. *JURNAL ILMIAH M-PROGRESS*, 6(2).pg. 77.

⁷ Creative is the adjective of 'create'. Creation means the products of imaginations or thinking, which are mostly produced by artists, such as poet, composer, and painter. Creating means to create or to produce something as the result of ideas. Thus, creative means having the ability to create. See Hermawan Aksan, 2014, *Pendidikan Budaya dan karakter Bangsa Disiplin, Kerja Keras, Kreatif dan Mandiri*, Nuansa Cendikia, Bandung, pg. 77.

⁸ *Kreatifitas Jadi Modal Kebangkitan UMKM*, Tangsel Pos, Kamis 21 Oktober 2021, pg. 8.

declaratory principle after Works are embodied in a tangible form without reducing by virtue of restrictions in accordance with the provisions of laws and regulations”.

From the Article 1 (1) we can make a conclusion that copyright is an exclusive right for the creator. The right automatically comes out based on declaratory principle after the work is embodied in tangible form. Still, it occurs without decreasing restrictions according to the provisions of laws and regulations. The protection is provided without the necessity to register first. Even though the recording of copyrights is the cause of a work protected, recording is voluntarily, which means under no duress. However, copyright recording is strongly suggested for some reasons. Some of them are to easily facilitate when there is a dispute, and most importantly to provide safety for the owner.

The forms of protected works are created by the creator based on their ability, creativity, or expertise. Creator is someone or some people who work together, and their inspirations create a work based on their ability to imagine, proficiency, skill or expertise, which is manifested into a specific and personal work. When creating a work, the creator can utilize it for economic benefit.

Article 1 Paragraph 3 of Laws of Copyrights clearly state about work. Work means any scientific, artistic, and literary works resulted from inspiration, ability, thought, imagination, dexterity, skill or expertise expressed in a tangible form. Protection is specifically provided for work in form of song⁹ because there is frequent infringement, for example by reproducing one or more copies, or by piracy, or by changing without the permission from the author.

The frequent infringements on intellectual property have made United States Trade Representative (USTR) to include Indonesia into Priority Watch List (PWL) category¹⁰. This category refers to the nations with highly bad infringements on intellectual properties. This PWL status, however, affects Indonesia so much, both nationally where Indonesia deals with difficulty to attract investors and globally where Indonesia become the circulation place for fake products.¹¹

If we observe the reality, the problems of infringements on intellectual properties are committed through many irresponsible acts. This includes singing an author’s song without permission and doing it on commercial purpose. At the end, these acts contravene the concept of copyrights, which is to protect the products of intelligence, thought, and expression or reflection which are manifested in intellectual works.

⁹ From the aspect of economic potential, music or song can provide great contribution in increasing the economy and national income. This is shown by the increasing businesses on music or song, which are integrated within the music organization in Indonesia. See Sanusi Bintang, 1998, *Hukum Hak Cipta*, PT. Citra Aditya Bakti, Bandung, pg. 95.

¹⁰ As the generation of the nation, we certainly expect Indonesia to get excluded from the Priority Watch List (PWL). The list periodically issued by US Commerce highlights the high level of infringement on Intellectual Properties (KI) Watch List (PWL) ini. The countries listed in this category show there are high level of piracy which causes United States to monitor them.

¹¹ Ade Miranti Karunia, 2021, *Masih Berstatus PWL, RI Dinilai Akan Kesulitan Gaet Investor Asing*, Kompas, 06/10.

As one of legal objects, the concept of copyrights is treated equally with concrete objects. If a piece of land can be rented, so can the copyrights. Tangible objects can only be sold for once, meanwhile copyrights can be licensed for many times, which causes multiple economic value. Nowadays, there are many people, especially in Europe, America, and other developed countries developing copyrights. This is because it provides massive profits, such as books, computer programs, movies, etc. Concrete objects are limited, meanwhile copyrights are inexhaustible as long as the people are willing to create works. This is because copyrights are products of men's thought.¹²

The numerous infringements on copyrights have caused the concept of copyrights go in bad condition. Moreover, when there is an infringement over laws. Thus, the exclusive right of the author or creator is massively ignored without nobody stops it.

The appreciation on exclusive right from the author means that the only song author can gain the economic benefits. The other parties cannot commercially utilize the exclusive right over a song copyright without permission from the author. Commercial use refers to the utilization of copyrights and/or rights of product with the purpose of obtaining economic benefit from various or paid sources.¹³ According to OK Sadikin, economic right is the right that provides economic benefit for the author.¹⁴ In Article 28 of Law No. 28 of 2014 on Copyrights, economic rights Economic rights are the exclusive right of the Author or the Copyright Holder in order to gain economic benefits from the Works.

The economic benefit can increase the wealth of the authors.¹⁵ Meanwhile, Article 9 (3) of Law No. 28 of 2014 on Copyrights states that every person exercising the economic right as meant by paragraph 1 is mandated to obtain permission from the author or the copyright holder. Next, in paragraph 4 every person without permission from the author or the copyright holder is prohibited to reproduce and or to use the works for commercial purpose.

Infringement on copyrights related to economic rights have been committed by many irresponsible people for their own profit. If we see what the law on copyrights says, this is certainly ironic. The law prohibits other parties beside the author to utilize other's works for the economic benefit. However, in its practice, there are so many parties utilizing copyrights for commercial purposes.

In truth, the economic rights are solely for the author or copyright holder. Thus, there are no other parties taking the economic benefit without the permission from the author or copyright holder. With its exclusive characteristic, the owner of copyright

¹² Idris, I. (2010). Pemanfaatan Nilai Ekonomi Hak Cipta Oleh Masyarakat Lokal. *INOVATIF|Jurnal Ilmu Hukum*, 2(4), pg. 123.

¹³ Komang Ardika dan Marwanto, 2019, Pemanfaatan Lagu Secara Komersial Pada Restoran Serta Keberadaan Pengunjung Yang Menyanyikan Lagu Secara Volunteer, *Jurnal Kertha Semaya*, Volume 7 No, 6, pg. 4.

¹⁴ OK Saidin, 2015, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Cetakan ke-9, PT. Raja Grafindo Persada, Jakarta, pg. 222.

¹⁵ Nurdahniar, I. (2016). Analisis Penerapan Prinsip Perlindungan Langsung Dalam Penyelenggaraan Pencatatan Ciptaan. *Veritas et Justitia*, 2(1), 231-252, pg. 235.

reserves the right to permit other parties to utilize his or her work. The exclusive rights are the essence of possessing copyrights.

The essence of copyright is to exclusively obtain the economic benefit¹⁶ over the exploited work of related party. The ways to utilize the economic right over a work is by reproducing (copying) and later by publishing, or making the works enjoyable (available) for the public.¹⁷ A song author is not going to enjoy the economic benefit of the song created if he does not get the song played for the public. Getting the song played can be by live or recorded performance. To be able to play the song in many places, the song certainly must be recorded and reproduced (copied). To be appropriately played and to have its own quality or beauty, the song must be recorded in such away by using the adequate equipment, be sung by a singer or a musician with certain skills. This is where the right and process related to perform the song (to make it available) for public emerge.¹⁸

Based on the background described above, this study will discuss the legal consequences for someone who violates copyright, especially when that person commercially takes advantage of the economic rights of a song copyrighted work. And what efforts can be made to strengthen the protection of a copyrighted work.

This research employed normative legal method¹⁹ by using library research approach. Researches on law within the normative juridical approach, which is also called as doctrinal research, concerns on the purposes of law, values of justice, validity of legal provisions, legal concepts, and legal norms.²⁰

Because this research employed library study, the data presented in this research were secondary data, which were obtained from various sources. The sources were related and relevant to the formulated questions. Secondary data are the data gained from the library materials²¹, which are books, journals, and other related-to-research sources.

¹⁶ Because copyrights provide certain periods of time to exploit the economic benefit on the works for their author, economic rights are frequently considered as the synonyms of exploitation rights. The activities of exploitation concerning the performers, where the singers sing songs or music (creation or work) and get recorded into CDs or cassettes to be sold to the consumers. See Eddy Damian, 1999, *Hukum Hak Cipta menurut Beberapa Konvensi Internasional, Undang-undang Hak Cipta 1997 dan Periindungannya terhadap Buku serta Perjanjian Penerbitannya*, Alumni, Bandung, pg. 62-63.

¹⁷ One of many ways to exploit the economic rights over a song is that an author can announce or reproduce his works by himself in order to take the economic benefit, or he can delegate the copyrights for other parties under an agreement, and/or he can receive royalties from the parties who have good will in exploiting his works. See Wijaya, H. T. (2003). Konsep Hak Ekonomi dan Hak Moral Pencipta Menurut Sistem Civil Law dan Common Law. *Jurnal Hukum IUS QUIA IUSTUM*, 10(23), 153-168., pg. 155.

¹⁸ Sardjono, A. (2010). Hak Cipta Bukan Hanya Copyright. *Jurnal Hukum & Pembangunan*, 40(2), 252-269, pg. 256-257.

¹⁹ Normative legal research is generally typical research conducted to develop legal science. The core problem in legal science is to determine what sentence should be rendered for certain concrete situations. See *Metode Penelitian Hukum Konstelasi dan Refleksi*, Yayasan Pustaka Obor Indonesia, Jakarta, 2013. Lebih jauh baca Bernard Arief Sidharta, 2013, *Penelitian Hukum Normatif: Analisis Penelitian Filosofikal dan Dogmatikal*, Yayasan Pustaka Obor Indonesia, Jakarta, pg. 142-143.

²⁰ Peter Mahmud Marzuki, 2007, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, pg. 22.

²¹ Soerjono Soekanto dan Sri Mamudji, 1985, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, CV. Rajawali, Jakarta, pg. 12.

After the data had been collected, the formulated problems were identified, which led to problem solving.²²

DISCUSSION

Legal Protection on Copyrights according to Indonesia Positive Law

In Article 1 Law of Republic of Indonesia No. 28 of 2014 on Copyrights, the protected works are explained as any scientific, artistic, and literary works resulted from inspiration, ability, thought, imagination, dexterity, skill or expertise expressed in a tangible form. Work refers to everything someone has in mind and then processed into concrete form, which can be felt by human's five senses. From the various mentioned works, song is classified as artistic work.

According to *Kamus Besar Bahasa Indonesia* (Indonesia Official Dictionary), song refers to: 1) various rhythmic sounds (in talking, singing, reading, etc.; 2) chants; 3) various melody (music, *gamelan*, authentic *keroncong*, etc.); 4). Behavior, way, manner.

Song itself can be defined as an artistic work combining artistic elements, which are artistic sound and poetic language. Song is usually written in shortened language and combined with rhythm and sound. It frequently uses metaphor or the recent language style. In a song, there is an important element, which must exist. The element is the song lyrics.²³

Because copyright of song is resulted from inspiration, ability, thought, imagination, dexterity, and skill, the legal protection on a work of song obtains position in the laws, both in particular and general legal provisions. Protection on song copyrights is, of course, just the same as the protection on copyrights entirely. The system automatically protects. This means that the copyright of the song is automatically protected even though the song is not processed into recording.

The song author automatically receives legal certainty over his work when the work has been manifested or published into concrete work (expression work). This may just happen because in nature, the law on copyrights is a system which follows automatic protection.²⁴ Thus, it is very clear for this current time that once a copyright is concrete and can be felt and even enjoyed, the work automatically gains protection.

In the Dutch time, the protection can be found in *Auteurs Wet* (S.1912.600). As Indonesia gained her independence, the Indonesia government changes the law on copyrights, which was based on the Dutch East Indies' legal system, into legal system

²² Bambang Waluyo, 2002, *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta, pg. 16.

²³ Bhaskara, I. B. K. H., & Sarjana, I. M. (2021). Perlindungan Hukum Terhadap Hak Cipta Lagu Terkait Dengan Perubahan Lirik Dalam Kegiatan Cover Lagu. *Kertha Negara: Journal Ilmu Hukum*, 9(10), 803-812, pg. 804.

²⁴ Damayanti, Ni Putu Utami Indah, AA Sri Indrawati, dan AA Sagungwiratni Darmadi, 2018, "Karya Cipta Electronic Book (E-Book): Studi Normatif Perlindungan Hak Ekonomi Pencipta." *Kertha Semaya 3 Journal Ilmu Hukum*, No. 3, pg. 4.

which was characterized Pancasila, the Indonesia's ideology. Then, Law no 6 of 1982 on Copyright was established. As the international society develop and due to the need of legal protection on copyrights, this law has experienced some changes or modification. The last one is Law No. 28 of 2014 on Copyrights.²⁵

The changes on law on copyrights have occurred because the legal system puts the intellectual property into three categories. First, most of society acknowledge the right of personal possession in personal property, which was known as intangible things; second, property in its real definitions, such as a piece of land and a building; third, the property known to belong to intellectual property, such as copyright. These concepts are attempted and applied as the grounding thinking to protect the rights of intellectual property.²⁶

The protection provided by law on copyrights is intended to stimulate the activities of authors, so they can keep creating and being more creative. The emergences of either new or existing creation must be supported and protected by the law. The embodiment of the legal protection is reaffirmed in law by stipulating the criminal sanctions for the people who contravene the law by violating the copyrights.²⁷

Protection on copyright has also been implemented in international level. It began about in the middle of 19th century on the basis of bilateral agreements. In these bilateral agreements, the nations acknowledged the rights of each other. However, the regulations are not in one kind. The need to establish one kind regulation resulted the agreement of Berne Convention for The Protection of Literary and Artistic Works on 9 September 1886. Berne Convention is the oldest international treaty on copyrights. It was open for ratification for every nation. Indonesia itself, under Presidential Regulation No. 18 of 1997, ratified Berne Convention within reservation of Article 33 Paragraph 1 in. As the oldest convention, Bern Convention is a series of treaty regulating the copyrights. Berne Convention was signed by ten initial members Belgium, France, Germany, Great Britain, Haiti, Italy, Liberia, Spain, Switzerland, Tunisia). There were seven nations that became the members by accession (Denmark, Japan, Luxemburg, Monaco, Montenegro, Norway, Sweden).²⁸

Indonesia has been aware to protect copyrights for a long time. This is asserted in Article 40 Paragraph 1 of Law No. 28 of 2014²⁹ on Copyrights. The content of this law states that song is one of protected work in intellectual property right.

²⁵ Inda Nurdahniar, *Op cit*, pg. 233.

²⁶ Khaerul H Tanjung, 2007, *Hak Kekayaan Intelektual*, Jakarta, pg. 23.

²⁷ OK. Saidin, 2010, *Aspek Hukum Hak Kekayaan Intelektual (intellectual property rights)*, Rajawali Pers, Jakarta, pg. 23.

²⁸ Yanto, O. (2016). Konvensi Bern dan Perlindungan Hak Cipta. *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan*, 6(1), 108-121, pg. 116.

²⁹ Law Nomor 28 of 2014 acknowledges two types of rights contained in a work, they are copyrights and neighboring rights. These both rights are part of exclusive rights, which are adhered to the authors, holders of copyrights, and owners of rights. See Ashibly, 2016, *Hukum Hak Cipta: Tinjauan Khusus Performing Right Lagu Indie Berbasis Nilai Keadilan*, Genta Publishing, Yogyakarta, pg. 51.

In the Law of Copyrights, there is no specific definition of works of song and/or music. Song is only just one of works protected by Law of Copyrights. It is protected just as other works mentioned in Article 40. To be precise, it is regulated in Article 40 Paragraph 1 Sub-Paragraph (d), works of song or music, with or without lyrics. Therefore, the general regulations apply for music and/or songs, just as for the other works, unless it is declared null and void.

The existence of copyrights is important to preserve. This is something absolute we have to fight for. Due to its economic right, no one is allowed to commit piracy on song copyright. Moreover, based on Law No. 28 of 2014 on Copyrights, the government has enacted *Lembaga Manajemen Kolektif Nasional* (LMKN, National Collective Management Organization) as the non-profit and legal institution where the creator, holder of copyright, and the owner of rights vest authorities into. LMKN manages the economic rights to collect and distribute the royalties.

To have the copyrights, especially for songs, structured and protected, government should now establish a special body handling the infringements and crimes on copyrights independently. This special body is going to monitor and to watch the development of copyright infringement. This body protecting copyrights can later work to execute arrest and to proceed the investigation when there is an allegation of infringement or allegation of crime on copyright. This body is very useful to eradicate cases on copyright piracy, especially for songs, which are utilized by other parties beside the authors for commercial purpose. The presence of this body is expected to reduce or even to free Indonesia from the problems of copyright piracy. From this point, this body should be occupied by reputable academicians, legal practitioners, and other professionals in their scientific fields. They occupy the body through official provisions enacted by the state, so they have legal duties and functions, which later make it easy for them to coordinate with other institutions in order to eradicate the piracy of intellectual properties. Therefore, the establishment of this protecting body is more pointed out on how to increase the efficiency and effectiveness in eradicating criminal acts on copyrights, especially for the song copyrights.

Legal Consequences For Someone Committing Infringement On Copyrights, Especially When The Person Commercially Utilizes The Economic Benefit Over A Work

In law of intellectual property, every one producing a work deserves the economic right for the work he creates. As the holder of a work, thus a creator deserves to determine and to decide whether his work is to be reproduced and to be announced. Thus, an author or a creator can utilize the economic benefits for the works he creates. Because of the creator's or author's important economic benefit for his works, the nation is mandated to provide legal protection on copyrights.

Every nation provides legal protection on copyrights and neighboring rights. This is the manifestation of reward for the creator or author considering not everyone has the ability to create work in the fields of science, arts, or literature, which the copyrights cover. Principally, protection on economic right is every economic aspect related to a work created, especially when the work has been produced and traded as regulated in Law of Copyrights. The economic value causes the copyrights become important to protect, especially from the irresponsible parties who decrease the economic value.³⁰

Economic rights can be defined as the rights that provide economic benefit (that can be valued by money) for the author. One of elements in the commercial use is to gain economic benefits. Economic benefits are the benefits gained that can be valued by money, or the benefit that can influence the value of money.³¹

Article 9 of Law No. 28 of 2014 has clearly mentioned which type of copyrights with the economic benefit. If there are parties besides the author or the copyright holders utilize the copyright for commercial purposes without the permission from the owner of the work or the copyright holders, their acts are prohibited. The acts are clearly prohibited because the economic rights in copyrights really consider the results of thinking and the author's ideas. Thus, using them without permissions for personal economic benefit is highly prohibited.³²

Therefore, Article 9 Paragraph 2 of Law No. 28 of 2014 regulates the provisions. This article clearly states that every one willing to exercise the economic rights of a work is obligated to gain permission from the author or copyright holder. If we see the Article 1 Paragraph 20, license refers to a written permission granted by the copyright holder or owner of rights. Then, the other unscrupulous parties are prohibited to reproduce a work with commercial purpose without permission from the author or copyright holder. Article 9 Paragraph 3 obviously states and regulates this.³³

Article 17 of Law No. 28 of 2014 on Copyrights mentions: (1) Economic rights to Works remain with the Author or the Copyright Holder provided that the Author or the Copyright Holder does not transfer all economic rights from the Author or the Copyright Holder to the recipient of the transfer of rights of the Works. (2) The economic rights that have been transferred by the Author or the Copyright Holder in whole or in part cannot be transferred for the second time by the same Author or Copyright Holder. Economic rights are exclusive rights of the authors or copyright holders in gaining the economic benefits over their works.

³⁰ Harry Randy Lalamentik, 2018, Kajian Hukum Tentang Hak Terkait (Neighboring Right) Sebagai Hak Ekonomi Pencipta Berdasarkan Undang-undang Hak Cipta Nomor 28 Tahun 2014, *Lex Privatum*, Vol. VI/No. 6/ Ags/, pg. 14-15.

³¹ Ardika, K., & Marwanto, M. (2019). PEMANFAATAN LAGU SECARA KOMERSIAL PADA RESTORAN SERTA KEBERADAAN PENGUNJUNG YANG MENYANYIKAN LAGU SECARA VOLUNTEER. *Kertha Semaya: Journal Ilmu Hukum*, 7(6), 1-13.pg.11.

³² Ida Bagus Komang Hero Bhaskara, *Op cit*, pg. 807.

³³ *Ibid*, pg. 808.

Criminal acts on copyrights of songs are specifically regulated in Article 113 of Law No. 28 of 2014 on Copyrights. When there is infringement on economic rights of an author, the perpetrator can be sanctioned as regulated in Article 113. Furthermore, the article describes:

- (1) Every Person who unlawfully infringes the economic rights as referred to in Article 9 Section (1) point i for Commercial Use shall be sentenced to imprisonment for up to 1 (one) year and/or fine up to Rp100,000,000 (one hundred million rupiahs).
- (2) Every Person who unlawfully and/or without permission of the Author or the Copyright holder infringes the economic rights of the Author as referred to in Article 9 section (1) point c, point d, point f, and/or the point h for Commercial Use shall be sentenced to imprisonment for up to 3 (three) years and/or fine up to Rp500,000,000.00 (five hundred million rupiahs).
- (3) Every person who unlawfully and/or without permission of the Author or Copyright holders infringes the economic rights of the Author as referred to in Article 9 Section (1) point a, point b, point e, and/or point g for Commercial Use shall be sentenced to imprisonment for up to 4 (four) years and/or fine up to Rp1,000,000,000.00 (one billion rupiahs).
- (4) Every Person fulfilling the elements as referred to in section (3) by committing piracy, shall be sentenced to imprisonment for up to 10 (ten) years and/or fine up to Rp4,000,000,000.00 (four billion rupiahs).

From the Articles explained above, thus imprisonment sentence is the legal sanction. It is the consequence for someone who infringes economic rights of a work for commercial purposes stated before, the perpetrator can be sentenced up to 10 years imprisonment. To avoid this criminal imprisonment, everyone utilizing a work or a song must enter an agreement.

Based on the law on copyrights and to avoid the criminal sanction, which is imprisonment, thus it is important to have an agreement before playing someone's songs for commercial purpose or economic benefit. There must be remuneration (royalties) paid to the author or copyright holder in the agreement. The song owners or song authors deserve for the royalties. The amount of royalties is agreed over a license agreement. There are recipient and giver parties in the agreement. According to the agreement, the licensed recipient can utilize the copyrights to sell the works by paying royalties to the license recipient.³⁴

The repudiated economic rights can diminish the authors' or copyright holders' motivation to create. Losing motivation can greatly affect the macro creativity of Indonesia. A nation should protect the works of its people, so works can provide wealth

³⁴ Putra, B. K. P., Budiarta, I. N. P., & Sukadana, I. K. (2020). Sanksi Hukum terhadap Pelanggaran Hak Cipta yang Dilakukan oleh Perusahaan Karaoke. *Jurnal Konstruksi Hukum*, 1(1), 68-72., pg. 69-70.

for them. The people gain wealth because copyrights are able to bring economic values for life.

Thus, the national principles and purposes stated on paragraph four of The Preamble of the 1945 Constitution "...shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order..."³⁵ should be sought in order to appreciate the national wealth. Furthermore, if we notice the developed countries, adequate protection on copyrights has successfully brought better growth for creative economy. It significantly and concretely contributes to the economy and wealth of the people.

From the above explanations, we can find out that the existing laws on copyrights have been relatively appropriate to regulate the sanctions on criminal acts on copyrights, which are related to the utilization of songs within the commercial purpose or economic benefit. Thus, the state³⁶, within all its instruments, must seriously enforce the law for copyrights, especially the rights for pirated songs that are used for commercial purposes. Moreover, nowadays there are laws specifically assessing and protecting the works.

Accountability of law cannot be interfered.³⁷ Even though copyrights are protected based on the existing laws, the nation's decisive actions on the perpetrators who reproduce and pirate the copyrights are highly required. This aims to protect and to maintain the economic rights of the author. The decisive actions on the perpetrators who commit crime and infringement of copyrights are also aimed to achieve justice³⁸ for the author. Thus, there are no injured parties, especially the author and the related ones. Laws must play important roles to protect the works against unlawful actions.

The legal standing in Indonesia is an order that comes various rules. These rules must be obeyed by all the national components without exception. This means that what the laws state must be based on the willingness of the laws themselves. This context indicates that commitment of the authorities (the institutions that run the state or government) is required.³⁹

As the authority and in order to execute the law enforcement, the state deserves to render criminal sanctions. The state itself is the only legal subject with rights to sentence (*ius puniendi*). The state's authorities to render criminal sanctions are delegated to the law enforcement agencies. These agencies work in a system called Criminal Justice

³⁵ Pattra, L. (2021). Pola Pengelolaan Kekayaan Nagari Dan Pemberdayaan Masyarakat Dalam Peningkatan Kesejahteraan. *Nagari Law Review*, 5(1), 59-68, pg. 67.

³⁶ Acts of the state must be aimed at public service by considering the interests of many people (public interests). See Sudikno Mertokusumo, 2011, *Kapita Selekta Ilmu Hukum*, Liberty, Jakarta, pg. 74.

³⁷ Soerjono Soekanto, 2019, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Rajawali Pers, Depok, pg. 13.

³⁸ Even though justice is not the only purpose of law, the substantial purpose is still the justice itself. See Dosminikus Rato, 2020, *Filsafat Hukum Mencari dan Memahami Hukum*, PT. Presindo, Yogyakarta, pg. 59.

³⁹ Amanda Lestari Putri Lubis, 2011, *Upaya dan Tindakan Hukum (Dalam Kasus Penyalahgunaan Kewenangan)*, Cintya Press, Jakarta, pg. 44.

System. According to Mardjono Reksodiputro, criminal justice system is a system in the middle of society aimed to eradicate crime.⁴⁰

Beside the law enforcement, intensive and continuous coordination with all related and competent parties are really important to maximize. It aims to minimize people's interests and desires to infringe the economic rights over any work through commercial purpose. In addition, it also aims to minimize the fake products that widely circulate in the middle of society. Still, well-planned campaign with other parties must be prepared, developed, and continued systematically.

In the end, the law enforcement is not aimed to achieve the legal goals of copyright law, but it is aimed to achieve the legal purposes themselves, which are to desire balances on interest, order, justice, serenity, and happiness for every single individual in order to protect the copyrights. The articles on law of copyrights are expected to provide legal protection to the author, so it is going to create a better condition for the development and protection of copyrights in Indonesia. This is because rendering sanctions for the perpetrators who infringe the copyright is going to give rise on the creative spirit, thus the authors can produce better works for the better economic growth.

Efforts to Strengthen Protection of a Songwriting Work

Wherever people are, they must have heard the song. Moreover, by looking at the rapid development of technology⁴¹ today, it is very easy for people to listen to songs, both at home, at work, in places to eat, markets and even public transportation. The songs that are listened to are certainly born from an intellectual ability and then processed until the birth of a copyrighted work that can be enjoyed by everyone. Because the song is born from an intellectual ability of its creator, it is not wrong that the song copyright is an object of copyright that gets protection in Law Number 28 of 2014 concerning Copyright.

Copyright is a special right owned by the creator to produce his work or give permission to other parties to do so but within the limits of applicable law.⁴² Copyright basically refers to the exclusive or single element of the creator and the results of ideas or ideas that have their own characteristics.⁴³ Songs are copyright in the field of art in a unique and personal form.

⁴⁰ Mardjono Reksodiputro, 2007, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana*, Kumpulan Karangan Buku Kelima, Pusat Pelayanan Keadilan dan pengabdian Hukum, Lembaga Kriminologi Universitas Indonesia, Jakarta, pg. 84.

⁴¹ The development of technology related to the means to enjoy a song and music certainly have a positive impact and negative impact. The positive impact is that people can enjoy music more easily besides the development of this technology will make it easier for creators to promote their songs. While the negative impact of the development of this technology is making more and more people who actually abuse technology for personal interests such as piracy and benefit from uploading a video of someone else's song to the Youtube site. See P. Dina Amanda Swari and I Made Subawa, 2018, legal protection of songs uploaded without the permission of the Creator on the Youtube site, *Kerta Semaya: Journal of Legal Sciences*, Volume 6 issue 10, pg. 4.

⁴² Endang Purwaningsih, 2005, *Perkembangan Hukum Intellectual Property Rights Kajian Hukum terhadap Hak atas Kekayaan Intelektual dan Kajian Komparatif Hukum Paten*, Ghalia Indonesia, Bogor, pg.2

⁴³ Edi Sofwan, 2020, *Hukum Bisnis dan Regulasi Menata Kembali Ekonomi Indonesia di Era New Normal*, Desanta Muliavisitama, Serang, pg. 116.

Therefore, a song is a protected work and is intact (is a single copyrighted work) even though it consists of elements of a song or melody, poetry or lyrics, and the arrangement including the notation is a copyright protected creation.⁴⁴

In connection with this protection, anyone is obliged to protect and respect the songwriting work of the creator. This protection is very important because it has been confirmed in the copyright law. Although protection has been confirmed in the copyright law, but in practice, song copyright infringement is a frequent phenomenon nowadays, where there are people doing commercial activities broadcasting music/songs without paying royalties or not asking permission from the creator. Indeed, in an era marked by high technological developments, songs are currently used in everyday life for entertainment, but ignore the principles of respect for the owner of the song by ignoring the economic rights of the songwriter.

One example of an act that ignores the economic rights of the copyright holder is to use someone else's work as if it were one's own work. This use can be used in places of entertainment that bring economic benefits. Besides that, it is also by piracy of other people's copyrighted works, then selling them commercially. These actions all aim to get the coffers of money and quickly become rich. Everyone has the right to get a lot of money, but not by acknowledging other people's work to be his personal work or plagiarizing and even using it openly with all economic advantages.

All forms of acts of duplicating or piracy and using the economic rights of the creator are a form of unlawful act that is contrary to Article 9 Paragraph (2) of Law Number 28 of 2014 concerning copyright which states that "Everyone who exercises economic rights as referred to in paragraph (1) must obtain permission from the Author or Copyright Holder." Then it is also explained in Article 9 paragraph (3) "Anyone without permission from the Author or Copyright Holder is prohibited from Reproduction and/ or Commercial Use of Works."

This article explains the need for permission for other parties to exercise the economic rights of the creator. If you use someone's copyright without permission, it is economically detrimental to the creators. In addition, there is also a prohibition on trading in other people's copyrighted goods for commercial purposes. If this prohibition is not heeded, it will not be closed in the future, piracy and illegal use of other people's works will increase and ultimately result in losses, not only for the creators but also for the songwriting industry. This shows us all that the demands for conditions and economic needs are getting higher, requiring irresponsible people to pirate other people's copyrighted works and enjoy the pirated creations of other people's works in the form of pirated CDs.

⁴⁴ Haris Munandar, M.A dan Sally Sitanggang, 2011, *Mengenal HAKI-Hak Kekayaan Intelektual*, Erlangga, Jakarta, pg. 94.

Then how can efforts be made to prevent piracy of copyrighted songs from happening again or at least to reduce them? Or what efforts can be made so that people who do not respect the songwriting work of the creator no longer use the songwriter's copyrighted work for commercial purposes? One of the efforts that can be done is to form a special agency that will later be tasked with preventing and eradicating all acts that violate the copyright of songwriters. Then what is no less important is to apply all the provisions of the existing regulations firmly by all law enforcement officers, especially judges in each of their decisions. The purpose of the establishment of a special institution or agency is to prevent and eradicate cases that occur around the issue of copyright piracy of song works or issues of violation of the economic rights of copyrighted works.

This agency will later serve as a deterrent and eradication of criminal acts of piracy of song copyrights and also the economic rights of the creator must be independent and cannot be influenced by any party. In carrying out its duties, this agency can coordinate with other law enforcement agencies and, requesting information about violations related to songwriting works for commercial purposes to the public or other relevant agencies. And more importantly always do hearings with songwriters anytime and anywhere. The purpose of all of this is to facilitate the right to handle, prevent and eradicate criminal cases related to songwriting works that are used in ways that are against the law.

Finally, this body should be given the authority to carry out investigations, investigations and make arrests, before being processed in court. After the case goes to court, the public prosecutor can apply articles relating to the act that was violated. Furthermore, the judge who handles the case that occurs must truly give or give a fair decision for the owners of copyrighted works whose works have been hijacked or taken by commercially irresponsible parties.

CONCLUSIONS

Based on the explained discussion, here are the conclusions, the consequence for someone who infringes economy rights over a work through commercial purpose is imprisonment up to four years and or a fine up to one billion rupiahs. To avoid this imprisonment sanction, there must be an agreement before the songs are played for commercial purpose or economic benefit. The agreement must mention the royalties obtained by the author or copyright holder. Next, government should have established a special body to provide protection over their works for the authors. This special body is assigned to monitor and to take further actions over the perpetrators on copyright infringement.

Efforts to strengthen the protection of a work of songwriting is to establish an independent special agency in the prevention and eradication of criminal acts of songwriting. This agency will be able to coordinate and cooperate with other agencies in

the prevention and eradication of copyright crimes that occur. Another important thing that must be considered is that law enforcement must really enforce the law properly and judges must give or pass a fair verdict for the owners of copyrighted works whose economic rights are taken away.

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